

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California,
Department of Transportation for authority to
remove and reconstruct an overhead grade
separation of Fifth Street, CPUC Crossing No.
002-80.75-A, DOT No. 026114M, within the City
of San Bernardino, County of San Bernardino,
California, over tracks owned by the BNSF
Railway known as the Cajon Subdivision.

Application 06-02-021
(Filed February 23, 2006)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

The undersigned Commissioner hereby rules upon the matters required by Rules 6 and 6.3 of the Commission's Rules of Practice and Procedure (Rules).

1. Category. This proceeding is categorized as ratesetting.
2. Hearing. A hearing is necessary in this proceeding.
3. Principal Hearing Officer. The principal hearing officer shall be Administrative Law Judge Victor D. Ryerson.
4. Prehearing Conference. A prehearing conference was held in this proceeding on May 19, 2006 in Los Angeles. I did not attend.
5. Issues. Pursuant to section 1202, subdivisions (a) and (b), of the California Public Utilities Code,¹ the Commission has the exclusive power to determine and

¹ All references herein are to the California Public Utilities Code unless otherwise stated.

prescribe the manner and the terms of alteration, operation, maintenance, use and protection of a crossing of a railroad by a publicly used highway. The California Department of Transportation (Caltrans) requests authority from the Commission to replace the existing Fifth Street overhead grade separation within the City of San Bernardino over the Cajon Subdivision on the main line of the BNSF Railway (BNSF), and thus a determination of public need for the alteration and the manner and terms of accomplishing the construction.

Caltrans plans to construct a new overhead structure to replace the existing Fifth Street Bridge as part of the Interstate Highway 215 (I-215) widening project, adding one traffic lane in each direction and reconfiguring on and off ramps.

BNSF filed a Protest and Request for Hearing in which it states that it would not generally oppose construction of the contemplated structure, but contends that the parties must reach agreement with respect to the terms of undertaking the construction to ensure the safety of its employees, property, and rail operations during construction. The parties did not reach agreement on these issues before the prehearing conference.

Except to the extent inherent in the question of a construction agreement governing the manner of construction, no issue has been raised about the apportionment of costs. The percentage apportionment of costs appears to be specified by section 1202.5, subdivision (d), and there is no apparent disagreement concerning apportionment at this time. Inasmuch as there is also no dispute regarding the necessity for the project, necessity will be presumed without the need for additional proof.

Caltrans has filed a condemnation action and sought an order of immediate possession in the Superior Court of San Bernardino County pursuant

to section 1202.1, subdivision (c), to gain entry to the BNSF property for accomplishing the construction. The existence of the condemnation action does not deprive the Commission of its jurisdiction to authorize the crossing alteration without delay, and creates no issue material to this proceeding.

In consideration of these circumstances, the principal issues, as provided in section 1202.1, are approval of the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party, and the sum to be advanced by Caltrans for the work to be performed by BNSF. These issues will be addressed in an interim decision, as specified in section 1202.1, unless the parties stipulate to the full resolution of all issues in a single, final decision.

Caltrans contends that a second hearing will be necessary on the apportionment of costs before the Commission issues a final decision. We will reserve this issue to be heard if necessary, but it is premature to order a second hearing at this time. Indeed, section 1202.5, subdivision (d), suggests that there may be no requirement to apportion any costs to BNSF if it did not bear any of the cost of the original project, and the issue could be resolved by stipulation or other simplified showing.

6. Procedural Schedule.

a. As ordered by the administrative law judge at the prehearing conference, the parties shall meet and confer, and shall file respective case management statements (or a joint case management statement) pursuant to Rule 49, subdivision(c), no later than June 9, 2006. In their case management statement(s) the parties shall indicate whether they are willing to refer this matter to mediation under the Commission's Alternative Dispute Resolution

Program. Stipulations regarding undisputed issues of fact and law shall also be filed and served with the parties' case management statement(s).

b. Two rounds of prepared testimony shall be served prior to the hearing. The initial round shall be served no later than July 5, 2006. The second round shall be served no later than July 17, 2006.

c. The evidentiary hearing will commence Monday, July 24, 2006 at 10:00 a.m. The hearing will be held at the Junipero Serra State Office Building, 320 West 4th Street, Suite 500, Los Angeles, California 90013, unless good cause is shown in the case management statement(s) why the hearing should be held at another location. Three days will be scheduled for the hearing.

d. The proposed interim decision will be issued no later than October 24, 2006.

e. In no event will the Commission's final decision be issued later than August 24, 2007.

IT IS SO RULED.

Dated May 25, 2006, at San Francisco, California.

/s/ JOHN A. BOHN
John A. Bohn
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated May 25, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.